

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

RESTORE PUBLIC TRUST,
1875 Connecticut Avenue NW, 10th Floor
Washington, DC 20009-6046

Plaintiff,

v.

U.S. DEPARTMENT OF TRANSPORTATION,
1200 New Jersey Avenue SE
Washington, DC 20590

Defendant.

Case No. 19-cv-2941

COMPLAINT

1. Plaintiff Restore Public Trust brings this action against the U.S. Department of Transportation under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendant has failed to comply with the applicable time-limit provisions of the FOIA, Restore Public Trust is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining the agency

from continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

5. Plaintiff Restore Public Trust is a public interest organization that promotes accountability and transparency in government to root out corruption and malfeasance. It is designed to serve as a critical resource for policymakers and elected officials investigating public corruption, members of the public looking for more information about what their government is or is not doing, and journalists examining the alleged malfeasance of government officials. It uses the information it gathers, and its analysis of that information, to educate the public through reports, press releases and other media. Restore Public Trust also makes the material it gathers available on its public website.

6. Defendant the U.S. Department of Transportation (DOT) is a department of the executive branch of the U.S. government headquartered in Washington, D.C., and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). DOT has possession, custody, and control of the records that Restore Public Trust seeks.

STATEMENT OF FACTS

7. On June 14, 2019, Restore Public Trust submitted a FOIA request to DOT seeking all correspondence between officials in the Office of the Immediate Secretary and President and CEO of American Crossroads Steven Law. A copy of the FOIA Request is attached hereto as Exhibit A and incorporated herein.

8. On June 23, 2019, DOT sent Restore Public Trust an acknowledgement letter assigning the request tracking number 2019-329.

9. Restore Public Trust has not received any further correspondence from DOT regarding the FOIA Request.

Exhaustion of Administrative Remedies

10. As of the date of this complaint, DOT has failed to (a) notify Restore Public Trust of any determination regarding its FOIA request, including the scope of any responsive records DOT intends to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

11. Through DOT's failure to respond to Restore Public Trust's FOIA request within the time period required by law, Restore Public Trust has constructively exhausted its administrative remedies and seeks immediate judicial review.

COUNT I

Violation of FOIA, 5 U.S.C. § 552

Failure to Conduct Adequate Search for Responsive Records

12. Restore Public Trust repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

13. Restore Public Trust properly requested records within the possession, custody, and control of DOT.

14. DOT is an agency subject to FOIA and must therefore make reasonable efforts to search for requested records.

15. DOT has failed to promptly review agency records for the purpose of locating those records which are responsive to Restore Public Trust's FOIA request.

16. DOT's failure to conduct an adequate search for responsive records violates FOIA.

17. Plaintiff Restore Public Trust is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to Restore Public Trust's FOIA request.

COUNT II
Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Responsive Records

18. Restore Public Trust repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

19. Restore Public Trust properly requested records within the possession, custody, and control of DOT.

20. DOT is an agency subject to FOIA and must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

21. DOT is wrongfully withholding non-exempt agency records requested by Restore Public Trust by failing to produce non-exempt records responsive to its FOIA request.

22. DOT is wrongfully withholding non-exempt agency records requested by Restore Public Trust by failing to segregate non-exempt information in otherwise exempt records responsive to Restore Public Trust's FOIA request.

23. DOT's failure to provide all non-exempt responsive records violates FOIA.

24. Plaintiff Restore Public Trust is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA request and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, Restore Public Trust respectfully requests the Court to:

- (1) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to Restore Public Trust's FOIA request;
- (2) Order Defendant to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to Restore Public Trust's FOIA request and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Restore Public Trust's FOIA request;
- (4) Award Restore Public Trust the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant Restore Public Trust such other relief as the Court deems just and proper.

Dated: October 1, 2019

Respectfully submitted,

/s/ Sara Kaiser Creighton

Sara Kaiser Creighton

D.C. Bar No. 1002367

AMERICAN OVERSIGHT

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Counsel for Plaintiff Restore Public Trust

EXHIBIT A



June 14, 2019

Re: Freedom of Information Act Request

Pursuant to the Freedom of Information Act, Restore Public Trust requests access to and copies of correspondence sent to, sent by, carbon copying ("CC"), or blind carbon copying ("BCC") officials in the Department of Transportation, Office of the Immediate Secretary that was sent to, sent by, carbon copying ("CC"), or blind carbon copying ("BCC") Steven Law, also known as Steve Law, between and including January 31, 2017 and the date the search is performed.

"Correspondence" should include but not be limited to: emails, email attachments, text messages, telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any responsive communications, summaries of any responsive communications, or other materials reflecting communications sent to, from, carbon copying (CC), or blind carbon copying (BCC) all relevant individuals.

If possible, I would prefer to receive this information electronically via e-mail at info@restorepublictrust.org. If you have questions or need additional information, please feel free to call me at 202-449-4367.

Fee Waiver Request

Restore Public Trust requests a waiver of fees because disclosure of the requested information is "in the public interest because it is likely to contribute significantly to public understanding" of government operations and is not "primarily in the commercial interest of the requester." The disclosure of the information sought under this request will document and reveal the operations of the federal government, including how public funds are spent and how officials conduct the public's business.

This request is primarily and fundamentally for non-commercial purposes. As a project of a 501(c)(3) organization, Restore Public Trust does not have a commercial purpose and the release of the information requested is not in Restore Public Trust financial interest. Restore Public Trust will use the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. Restore Public Trust will also make materials it gathers available on its public website.

Accordingly, Restore Public Trust qualifies for a fee waiver.

Conclusion

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. Additionally, if any documents are withheld based on the Agency's interpretation of any exemption, Restore Public Trust requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). Specifically, this Vaughn index should describe withheld documents with enough specificity to determine whether the material is exempt under the act and must describe each document or portion withheld.

Thank you for your assistance.

Sincerely,

Caroline Ciccone
Executive Director, Restore Public Trust